IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.284 of 2004

The Commissioner of Income Tax,IX
Chennai. Appellant

v.

Devraj Nensee & Co.,
Chennai. Respondent

Tax Case Appeal preferred under section 260A of the Income tax Act, 1961 against the order dated 20.01.2003 made in ITA No.254/Mds/00 by the Income Tax Appellate Tribunal, 'C' Bench, Madras against the order of the Commissioner of Income Tax (Appeals) Chennai-34 in GT/Appeal No.ITA.308/97-98 date of order 5.11.99 against the Deputy Commissioner of Income Tax Special Range X, Chennai in PAN/GIR No.301-D/94-95 date of order 24.3.97.

For Appellant : Mr.K.Subramani

For Respondent : Mr.V.S.Jayakumar

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The revenue has filed the appeal framing the following questions of law :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the reduction of 90% of the receipts from interest should be taken into account after adjustment of expenses for the purpose of computing the profits of the business under section 80HHC.

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in equating income from commission, rent, brokerage to income from interest with

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respect to incurring of expenditure?"

2. The material facts of the case proceed as follows : The assessee filed return of income claiming deduction under section 80HHC of the Income Tax Act, 1961. The assessing officer finalised the assessment after, inter alia, deducting 90% interest received for the purpose of 80 HHC deduction. Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) on the ground that the interest earned from the sister concern is part of the appellant's business profits and therefore the same cannot be reduced. As an alternative plea, it was contended that the interest paid to the sister concern for the loans obtained from them should be deducted from the interest received from them and only the net amount should be taken. The Commissioner of Income Tax (Appeals) dismissed the appeal on that issue. The assessee filed a further appeal before the Income Tax Appellate Tribunal. The Tribunal held that since there was bound to be an expenditure directly relatable in earning such income, only the net amount of interest should be taken. Aggrieved by the order of the Tribunal, the present appeal is filed.

3. Learned counsel for the revenue submitted that the Tribunal has erred in bringing a new concept of "net interest", which is not contemplated under the statute. In an enactment, more so, in a fiscal enactment, the statutory provision has to be interpreted, having regard to the terminology employed in the provision. It is impermissible for the Tribunal to add or delete some words into or from the provision for the purpose of interpretation. The terminology employed in clause (baa) of the explanation to Section 80HHC is very clear to the effect that any receipt by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature included in such profit. So, the incorporation of net interest by the Tribunal is erroneous and the order so made has to be set aside. However, the learned counsel appearing for the assessee has submitted that in the absence of any clear terminology as to whether the term interest denotes gross or net interest, having regard to the scheme of the Act, it has to be construed only as a net interest and netting of interest is permissible. For that purpose, he relied on a decision of the Delhi High Court in the case of CIT v. Shri Ram Honda Power Equip, (2007) 289 ITR 475.

4. We heard the argument of the learned counsel on either side and perused the materials on record.

5. The explanation to Section 80HHC in clause (baa) defines "profits of the business" for the purpose of that section. That clause reads thus :

"(baa) 'profits of the business' means the profits of the business as computed under the head 'Profits and

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gains of business or profession' as reduced by—

(1) ninety per cent. of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits ; and

(2) the profits of any branch office, warehouse or any other establishment of the assessee situate outside India."

The said clause does not refer to net interest. It refers, inter alia, to the interest included in the profits and gains of the business or profession.

6. From the appellate order, it could be seen that the receipt of the income has not been regarded as an income of business. The Appellate Order proceeds to the effect that the assessee's main business was export of precious stone. It could therefore not be said that the earning of interest was related to or part of that business. Even otherwise the interest received in question were not earned in the course of export business of the appellant firm and interest receipt was not in anyway related to the proceeds of export/profit from the export business. Having stated so, the appellate authority also negatived the plea of the assesseee that the assessing officer should have netted the interest received from the interest payment. In the Tribunal order, the Tribunal has observed that in computing profit under the heads of "profits and gains of business or profession", the receipt like brokerage, commission, interest, rent, charges, etc., would normally be assessable under the head of "income from other sources". It might also be in certain circumstances assessable under the "head of business". It further observed that under what ever head the income is computed, the concept was that for earning an income like brokerage, commission, interest, there could be some expenditure, which was directly relatable and was expended in earning such income and on that basis, it is concluded that the netting is permissible.

7. The question similar to the one in the case on hand has been considered by the Division Bench of this Court in the case of K.S.Subbiah Pillai& Co. (India) P. Ltd. v. CIT, 260 ITR 304, wherein after extracting the explanation, the Court held that the clause (baa) does not refer to net interest. It refers, inter alia, to the interest included in the profits and gains of the business or profession. The Court further held that clause (baa) under the Explanation to section 80HHC defines profits of the business as computed under the head "Profits and gains of business or profession". The deductions to be made are from the amount of profit so computed and not from the amount computed under any other head of income of that assessee. The reference to "such profits" in sub-clause (1) of clause (baa) can only be to the

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profits of the business computed under the head "Profits and gains of business or profession". Addition of prefix "the" to "profits" in clause (baa), while referring to the "profits and gains of business or profession" makes it clear that it is only the amounts already included in that computation which are now to be reduced to the extent of 90 per cent., if those items are included in sub-clause (1) of that definition. Interest paid and claimed as deduction in the computation of profits and gains for business, cannot be set off against interest received and computed under income from "other sources".

8. In the other decision of this Court in the case of CIT v. Chinnapandi, (2006) 282 ITR 389, after referring to clause (baa) of explanation to Section 80HHC, it was held that on a plain reading of the provision, it is clear that what the provision stipulates is that "profits of the business" for the purpose of section 80HHC of the Act mean the profits of the business as computed under the head "Profits and gains of business or profession". While computing such profits under the head "Profits and gains of business or profession", if any receipt by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is included in such profits, the same has to be reduced by 90 per cent from the profits computed as aforesaid. The deductions to be made are from the amount of profits so computed and not from the amount computed under any other head of income of that assessee. No reference of net interest is mentioned in the said clause. What was to be seen was the nature of receipt as contemplated under the clause. Once the receipt of the interest is known, 90 per cent of the same is to be reduced from the profits without deducting any amount. In order to come to the conclusion, the Court has relied on the decision of K. S. Subbiah Pillai and Co. (India) P. Ltd. v. CIT (2003) 260 ITR 304 and the Punjab and Haryana High Court judgment in the case of Rani Paliwal v. CIT reported in [2004] 268 ITR 220.

9. The Delhi High Court judgment in CIT v. Shri Ram Honda Power Equip, (2007) 289 ITR 475 has considered the two decisions of this Court and also the Punjab Haryana High Court judgment relied on by this Court in Chinnapandi case and ultimately taken a view after taking an analogy from the then existing provision of Section 80M, that the principle of netting appears to logically get attracted as no prudent businessman would allow taxation of the interest income de hors the expenditure incurred for earning such income. It further held that the words "included any such profits" following the words "receipts by way of interest, commission, brokerage, etc.", is a clear pointer to the fact that only net interest would be includible in arriving at the business profit. Once business income has been determined by applying accounting standards as well as the provisions contained in the Act, the assessee would be permitted to, in terms of section 37 of the Act, claim as deduction, expenditure laid out for the purposes of earning such business income. The Delhi High Court

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observed that this Court while considering Chinnapandi case has followed the decision of K.S.Subbiah Pillai case and held that the deduction within the meaning of explanation (baa) was permissible only on gross interest and not net interest, without noticing that K.S.Subbiah Pillai case, the interest receipt was treated as an income from other source of business income.

10. But the facts of the present case, as stated earlier, the appellate authority has not regarded the interest income as business income. Thus, the reliance of the Delhi High Court Judgment in CIT v. Shri Ram Honda Power Equip, (2007) 289 ITR 475 by the assessee would not advance its case any further. In view of the binding decision of this Court in K.S.Subbbiah Pillai case (260 ITR 304) and the Chinnapandi case (282 ITR 389), the first question of law is answered in negative. The second question of law does not arise for consideration as nothing of that sort was discussed and finding was given by the authorities. Hence the order of the Tribunal is set aside by allowing the appeal.

Sd/
Asst.Registrar

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Sub Asst.Registrar

mf/usk

To

1. The Asst.Registrar,
   Income-tax Appellate Tribunal
   Chennai
2. The Commissioner of Income-tax (Appeals)
   - IV, Chennai
3. The Deputy Commissioner of Income-tax
   Spl.Range X, Chennai.
4.The Asst.Registrar,
Income Tax Appellate Tribunal,
Shastri Bhavan, Rajaji Salai, Chennai -34.

+1cc to Mr.V.D.Gopal, Advocate Sr 55713

+1cc to Mr.M.Muralikumaran, Advocate Sr 55224

MRD (CO)
km/21.9.

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